IP 06-0154-M 1 KPF US v Sistrunk
Magistrate Kennard P. Foster Signed on 7/6/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. IP 06-154M-01
	)	
COREY SISTRUNK,	)	
a/k/a "Pimp C",	)	
	)	
Defendant.	)	

ENTRY AND ORDER OF DETENTION PENDING TRIAL

SUMMARY

The defendant is charged in a criminal complaint issued on June 6, 2006, with conspiracy to possess with intent to distribute and/or distribute 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Controlled Substance, in violation of Title 21 U.S.C. §§841(a)(1), 841(b)(1)(A)(ii), and 846.

On June 27, 2006, the government filed a written motion and moved for detention pursuant to Title 18 U.S.C. §§3142(e), (f)(1)(B), (f)(1)©, and (f)(2)(A), on the grounds that the defendant is charged with an offense for which the maximum sentence is life imprisonment, a drug trafficking offense with the maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, and that the defendant is a serious risk of flight, if released.

The preliminary hearing and detention hearing were held on June 30, 2006. The United States appeared by Barry D. Glickman, Assistant United States Attorney. Corey Sistrunk appeared in person and by his appointed counsel, Steven Dillon.

At the preliminary hearing, the Government rested on the complaint and the affidavit attached thereto and tendered Task Force Agent Garth Schwomeyer, Federal Bureau of Investigation (FBI), for cross examination. Counsel for the defendant examined Task Force Agent Schwomeyer on all issues before the Court. The defendant presented no additional evidence in the preliminary hearing, and the preliminary issue as to the defendant was submitted to the Court. The Court found that the evidence constituted probable cause to believe that the defendant committed the crime charged in the complaint. The charge in the criminal complaint gives rise to the presumptions that there are no condition or combination of conditions of release which will reasonably assure the safety of the community or that the defendant will not be a serious risk to flee if released.

While the defendant did rebut the presumption that he is a risk of flight, he did not rebut the presumption that he is a danger to the community and, consequently, was ordered detained.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The defendant is charged in a criminal complaint issued on June 6, 2006, with conspiracy to possess with intent to distribute and/or distribute 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Controlled Substance, in violation of Title 21 U.S.C. §§841(a)(1), 841(b)(1)(A)(ii), and 846.

2. The penalty for the count in the criminal complaint is a mandatory minimum

sentence of 10 years and a maximum of life imprisonment. See 21 United States Code, Sections 841(b)(1)(A)(ii) and 841(b)(1)(A)(ii).

3. The Court takes judicial notice of the criminal complaint in this cause. The Court further incorporates the evidence admitted during the preliminary hearing and the detention hearing, as if set forth here.

4. The Government rested on the complaint and the affidavit attached thereto and tendered and tendered Task Force Agent Garth Schwomeyer, Federal Bureau of Investigation, for cross examination. Counsel for the defendant examined Task Force Agent Schwomeyer on all issues before the Court. The defendant presented no additional evidence in the preliminary hearing, and the preliminary issue as to the defendant was submitted to the Court.

5. The Court finds there is probable cause for the offense the defendant is charged with in the complaint, and the rebuttable presumptions arise that the defendant is a serious risk of flight and a danger to the community. Title 18 U.S.C. § 3142(e).

6. The Court admitted a Pre-Trial Services Report (PS3) regarding defendant Corey Sistrunk on the issue of his release or detention. Mr. Sistrunk is age 31 (DOB 8-11-74). The PS3 indicates the following:

(A) On July 1, 1994, Mr. Sistrunk was convicted in Lake County, Indiana, of Possession of Cocaine and was sentenced to 18 months imprisonment (suspended).

(B) On April 26, 1995, Mr. Sistrunk was arrested in Lake County, Indiana, and was charged with Resisting Law Enforcement. Disposition of that charge is unknown.

© On May 24, 2006, Mr. Sistrunk was arrested in Marion County, Indiana, and was charged with Welfare Fraud, Theft, and Perjury. Those charges are currently pending.

(D) Mr. Sistrunk did not provide a urine sample to U.S. Probation despite being ordered to do so by the Court and admitted use of illegal drugs in the past.

7. While the defendant did rebut the presumption that he is a risk of flight, he did not rebut the presumption that he is a danger to the community and, consequently, is ORDERED DETAINED.

8. When a motion for pretrial detention is made, the Court engages a two-step analysis: first, the judicial officer determines whether one of six conditions exists for considering a defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *United States v. Friedman*, 837 F.2d 48, 49 (2nd Cir. 1988).

A defendant may be considered for pretrial detention in only six circumstances: when a case involves one of either four types of offenses or two types of risks. A defendant is eligible for detention upon motion by the United States in cases involving (1) a crime of violence, (2) an offense with a maximum punishment of life imprisonment or death, (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more, or (4) any felony where the defendant has two or more federal convictions for the above offenses or state convictions for identical offenses, 18 U.S.C. § 3142(f)(1), or, upon motion by the United States or the Court *sua sponte*, in cases involving (5) a serious risk that the person will flee, or (6) a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *Id.*, §3142(f)(2); *United States v. Sloan*, 820 F.Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. 18 U.S.C. §3142(e). The judicial officer determines the existence of these conditions by a preponderance

of the evidence. *Friedman*, 837 F.2d at 49. *See United States v. DeBeir*, 16 F.Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F.Supp. 260, 265 (W.D. N.Y. 1998) (same). In this case, the United States moves for detention pursuant to §3142(f)(1)(B), ©, and (f)(2)(A) and the Court has found these bases exist.

Once it is determined that a defendant qualifies under any of the six conditions of §3142(f), the court may order a defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. 18 U.S.C. §3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985). With respect to reasonably assuring the appearance of the defendant, the United States bears the burden of proof by a preponderance of the evidence. *United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Himler*, 797 F.2d 156, 161 (3rd Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S.Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2nd Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F.Supp. 591, 596 (N.D. Ind. 1987). With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739, 742, 107 S.Ct. 2095, 2099, 95 L.Ed.2d 697 (1987); *Portes*, 786 F.2d at 764; *Orta*, 760 F.2d at 891 & n. 18; *Leibowitz*, 652 F.Supp. at 596; *United States v. Knight*, 636 F.Supp. 1462, 1465 (S.D. Fla. 1986). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418,

431-33, 99 S.Ct. 1804, 1812-13, 60 L.Ed.2d 323 (1979). The standard for pretrial detention is "reasonable assurance"; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the defendant's appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

9. A rebuttable presumption that no condition or combination of conditions will reasonably assure the defendants' appearance or the safety of any other person and the community arises when the judicial officer finds that there is probable cause to believe that the defendant committed an offense under (1) the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*; the Controlled Substances Import and Export Act, 21 U.S.C. § 951 *et seq.*, or the Maritime Drug Law Enforcement Act, 46 U.S.C. App. § 1901 *et seq.*, for which a maximum term of imprisonment of ten years is prescribed; (2) 18 U.S.C. § 924©; (3) 18 U.S.C. § 956(a); or (4) 18 U.S.C. § 2332b. 18 U.S.C. § 3142(e).

This presumption creates a burden of production upon a defendant, not a burden of persuasion: the defendant must produce a basis for believing that he will appear as required and will not pose a danger to the community. Although most rebuttable presumptions disappear when any evidence is presented in opposition, a § 3142(e) presumption is not such a "bursting bubble". *Portes*, 786 F.2d at 765; *United States v. Jessup*, 757 F.2d 378, 383 (1st Cir. 1985). Therefore, when a defendant has rebutted a presumption by producing some evidence contrary to it, a judge should still give weight to Congress' finding and direction that repeat offenders involved in crimes of violence or drug trafficking, as a general rule, pose special risks of flight and dangers to the community. *United States v. Dominguez*, 783 F.2d 702, 707

(7th Cir. 1986) (presumption of dangerousness); *United States v. Diaz*, 777 F.2d 1236, 1238 (7th Cir. 1985); *Jessup*, 757 F.2d at 383.

The Court has found that while the defendant did rebut the presumption that he is a risk of flight, he did not rebut the presumption that he is a danger to the community.

10. If the defendant had rebutted the presumptions, the Court would consider the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community is the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S.Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

11. In this regard, the Court finds and concludes that the evidence in this case demonstrates the following:

a. During the months of February 2005 to June 2005, the Federal Bureau of Investigation and other law enforcement agencies were involved in a multi-jurisdictional investigation of a large drug trafficking organization which operated in the Indianapolis, Indiana area and received kilogram quantity amounts of cocaine from the Chicago and Gary, Indiana area. During the time period of this investigation, four different court-authorized wiretaps were utilized to conduct wire surveillance on cellular telephones linked to members

of the organization. During the course of the investigation, law enforcement seized over 46 kilograms of cocaine and nearly three quarters of a kilogram of crack cocaine.

b. During the course of the investigation, law enforcement agents identified Corey Sistrunk, a/k/a "Pimp C", as an active participant in the drug trafficking investigation.

c. Pursuant to the wiretaps, numerous telephone conversations were intercepted between Sistrunk and other members of the drug trafficking conspiracy. For example, on April 26, 2005, a telephone conversation was intercepted between Corey Sistrunk and co-conspirator Anthony Howard. During the telephone call, Sistrunk was informed by Howard that the narcotics he ordered was on the way. Several hours later, law enforcement officers conducted a traffic stop on a white van which had been identified in previous intercepted telephone calls as the vehicle which was transporting the cocaine to Howard. During the traffic stop, one and a half kilograms (1525.70 grams) of cocaine was seized. After the traffic stop occurred, Howard made a telephone call to Sistrunk to inform him that the narcotics had been "taken off" by law enforcement.

d. On May 2, 2005, a telephone conversation was intercepted between Corey Sistrunk and Anthony Howard in which Howard asked Sistrunk if he still needed narcotics. Sistrunk said he did as long as the product was of good quality. Howard subsequently gave Sistrunk directions to a storage facility where Sistrunk was observed by law enforcement as he picked up the kilogram of cocaine at the storage facility. Law enforcement officers also observed two children present in the vehicle with Sistrunk. Law enforcement agents later interviewed Howard who stated that he delivered two kilograms of cocaine to Sistrunk at his storage facility. Howard also stated that he had distributed two kilograms of cocaine to Sistrunk on other past occasions.

e. On June 2, 2005, law enforcement officers executed a search warrant at 620 Jack Pine Court, the residence of Anthony Howard. Investigators had been conducting surveillance on this residence and waiting for a shipment of narcotics to be delivered from Gary, Indiana. This information was obtained through the interception of telephone calls between Anthony Howard and Avery Beeks. Dwayne Bowen and Thomas Williams arrived during the morning hours and delivered the narcotics. Once they departed the residence, the search warrant was executed. Three kilograms of cocaine were located inside the residence. Howard stated in an interview that two of the three kilograms seized that day were destined for Cory Sistrunk, aka "Pimp C".

f. On May 24, 2006 Sistrunk was arrested at his residence, 1835 Venona Place, Indianapolis, Indiana on unrelated state charges. When the residence was searched, Sistrunk directed law enforcement agents to a loaded .45 caliber handgun in the master bedroom.

g. Sistrunk gave a post arrest statement to law enforcement in which Sistrunk stated that he received both marijuana and cocaine from Anthony Howard in the past. Sistrunk stated that on May 2, 2005 he received a kilogram of cocaine from Howard. Sistrunk also stated that the kilograms he received from Howard were always "fronted" to him, and he would pay Howard within three to four days. Sistrunk said he was typically charged $16,000.00 for one kilogram of cocaine. Sistrunk also admitted that he was suppose to receive two kilograms on June 2, 2005.

h. The evidence demonstrates a strong probability of conviction.

i. The mandatory minimum sentence of 10 years, when coupled with the defendant's criminal history, substantially increases the seriousness of his risk for flight.

The Court having weighed the evidence regarding the factors found in 18 U.S.C. §3142(g), and based upon the totality of evidence set forth above, concludes that if the defendant had rebutted the presumptions in favor of detention, he nevertheless, would be detained, because he is a serious risk of flight and clearly and convincingly a danger to the community.

WHEREFORE, Corey Sistrunk is hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. He shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with the Court proceeding.

Dated this ____ day of July, 2006.

KENNARD P. FOSTER
U.S. Magistrate Judge
Southern District of Indiana

Distribution:

Barry D. Glickman,
Assistant U. S. Attorney
10 West Market Street, #2100
Indianapolis, Indiana 46204

Steven Dillon
Attorney at Law
3601 N. Pennsylvania Street
Indianapolis, Indiana 46205

U. S. Probation, Pre-Trial Services

U. S. Marshal Service